



# CITY OF BIRMINGHAM

OFFICE OF THE CITY ATTORNEY

PUTTING PEOPLE FIRST

Randall L. Woodfin  
Mayor

Nicole E. King  
City Attorney

Melissa E. Smiley  
Chief Assistant  
City Attorney

Lawrence Cooper  
Chief Assistant  
City Attorney

Joseph R. Abrams  
Jacinda D. Anderson  
Julie P. Barnard  
LaResha D. Cade-Spearman  
Samantha A. Chandler  
Holly J. Clemente  
Caroline W. Douglas  
Michael M. Fliegel  
Alan L. Foster  
Fredric L. Fullerton, II  
Brian A. Kilgore  
Yolanda Y. Lawson  
James D. Love  
Karen A. McLain  
Lee B. Powell  
Tracy L. Roberts  
Krystle R. Savage  
Keith A. Sheffield  
Rozalind Smith-Simon  
Ted I. Smith  
Destini Solomon  
James C. Stanley  
Kayla L. Sullivan  
Malera T aylor-Wright

Nathaniel Bagley, Jr.  
Claims Administrator

September 15, 2022

K. Mark Parnell  
200 Office Park Drive, Suite 328  
Birmingham, AL 35223

RE: Resignation of Christopher Rice

Dear Attorney Parnell:

The Office of the City Attorney has determined that there is a compelling argument that the resignation of Chris Rice from the BWB was appropriately tendered and was effective immediately on September 6, 2022.

An unconditional resignation of a public official is effective immediately, cannot be withdrawn, and need not be accepted to be effective. See AGO 2003-065.

If a public officer or employee transmits an unconditional resignation to be effective immediately and he intends that it reach the authority entitled to receive it, his resignation is effective at that point. See AGO 83-00231 and *City of Dothan v. Lucas*, 254 So.2d 341 (Ala.1971). The officer or employee may not withdraw such a resignation even though there has been no acceptance by the authority entitled to receive it. See *State v. Fowler*, 48 So. 985 (Ala. 1909).

A public corporation organized under water board statutes is an entity separate and independent from city which it serves, and city can lawfully exercise only such power over such corporation as is conferred on the city **by charter** of such corporation and by general laws of state under which organized. See *Water Works Bd. of Leeds v. Huffstutler*, 299 So.2d 268 (Ala. 1974).

The Certificate of Amendment and Restatement of Certificate of Incorporation of the Water Works Board and Sewer Board of the City of Birmingham ("BWVB"), dated June 1, 1999, provides in Section 6.06 that "Any director may resign by filing written notice of such resignation with **the Board or with the city clerk of the City**, stating the effective date thereof."

Rule 4(c)(8), ARCVp, states that "Upon a county, municipal corporation, or any other governmental entity not previously mentioned, or an agency thereof, **by serving the chief executive officer or the clerk**, or other person designated by appointment or by statute to receive service of process, or upon the attorney general of the state if such service is accompanied by an affidavit of a party or the party's attorney that all such persons described herein are unknown or cannot be located."

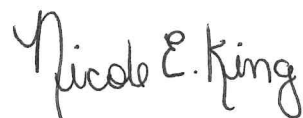
Chris Rice tendered his resignation to Mayor Woodfin in writing on September 6, 2022, stating that the resignation was effective immediately.

Mayor Woodfin transmitted the Letter of Resignation to the City Clerk, who officially filed it in the Office of the City Clerk on September 8, 2022.

We are of the opinion that the resignation tendered by Chris Rice was properly submitted to the Mayor with the intent that it be filed with the City Clerk in compliance with BWVB's governing documents. Filing with the Chief Executive Officer of the City would also satisfy the requirements of the Alabama Rules of Civil Procedure for filing with the City Clerk, and in fact the resignation letter was timely transmitted to the City Clerk who filed it on September 8, 2022. Because the resignation letter was properly tendered and was effective immediately, the resignation may not be withdrawn.

The BWVB Board should acknowledge the resignation and determine that there is now a vacancy. The BWVB should then notify the Mayor who may appoint a replacement for the vacant seat.

Sincerely,

A handwritten signature in black ink that reads "Nicole E. King". The signature is written in a cursive, flowing style.

Nicole E. King  
City Attorney